

Committee Substitute for
Committee Substitute for Senate Bill No. 620

An act relating to the wireless emergency telephone system; amending s. 11.45, F.S.; removing the annual audit of the Wireless Emergency Telephone System Fund from the duties of the Auditor General; amending s. 364.02, F.S.; revising fee schedules for providers of interexchange telecommunications services; amending s. 365.171, F.S.; revising provisions for certain nonemergency telephone number pilot projects; amending s. 365.172, F.S.; limiting application of definitions; adding definitions relating to wireless telephone communications; revising duties of the Wireless 911 Board; providing for grants and loans to certain counties for the purpose of upgrading E911 systems; authorizing the hiring of an executive director and an independent, private attorney; specifying that state and local governments are not customers under provisions for the wireless E911 monthly fee; revising timeframe to reduce the amount of the fee or for reallocation of moneys collected for the fee; providing legislative intent regarding the emergency wireless telephone system; providing standards for local governments to follow when regulating the placement, construction, or modification of a wireless communications facility; directing local governments to grant or deny properly completed applications within specified time periods; providing criteria and procedures for local approval of an application by a provider of wireless communications services; authorizing the local government to impose an application fee; directing local governments to notify a provider in writing of the deficiencies in an application; directing local governments to notify a provider in writing whether the resubmission of information properly completes the application; authorizing local governments to continue requesting information until the application deficiencies are cured; providing for a limited review by a local government of an accessory wireless communications facility; prohibiting local governments from imposing certain restrictions on wireless communications facilities; providing that an action brought by a person adversely affected by a decision of a local government relating to a wireless communications facility shall be considered on an expedited basis; removing certain complaint procedures; amending s. 365.173, F.S.; directing how a county may use funds derived from the E911 fee; requiring the board of county commissioners to appropriate the funds to the proper uses; removing the requirement that the Auditor General annually audit the E911 fund; amending s. 337.401, F.S.; revising provisions relating to use of right-of-way for utilities subject to regulation to remove certain application provisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(a) Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee.

(b) Annually conduct a financial audit of state government.

(c) Annually conduct financial audits of all universities and district boards of trustees of community colleges.

(d) Annually conduct financial audits of the accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census.

(e) Through fiscal year 2008-2009, annually conduct an audit of the Wireless Emergency Telephone System Fund as described in s. 365.173.

(f) Annually conduct audits of the accounts and records of the Florida School for the Deaf and the Blind.

(g) At least every 2 years, conduct operational audits of the accounts and records of state agencies and universities. In connection with these audits, the Auditor General shall give appropriate consideration to reports issued by state agencies' inspectors general or universities' inspectors general and the resolution of findings therein.

(h) At least every 2 years, conduct a performance audit of the local government financial reporting system, which, for the purpose of this chapter, means any statutory provisions related to local government financial reporting. The purpose of such an audit is to determine the accuracy, efficiency, and effectiveness of the reporting system in achieving its goals and to make recommendations to the local governments, the Governor, and the Legislature as to how the reporting system can be improved and how program costs can be reduced. The Auditor General shall determine the scope of such audits. The local government financial reporting system should provide for the timely, accurate, uniform, and cost-effective accumulation of financial and other information that can be used by the members of the Legislature and other appropriate officials to accomplish the following goals:

1. Enhance citizen participation in local government;
2. Improve the financial condition of local governments;
3. Provide essential government services in an efficient and effective manner; and
4. Improve decisionmaking on the part of the Legislature, state agencies, and local government officials on matters relating to local government.

(i) Once every 3 years, conduct performance audits of the Department of Revenue's administration of the ad valorem tax laws as described in s. 195.096.

(j) Once every 3 years, conduct financial audits of the accounts and records of all district school boards in counties with populations of 125,000 or more, according to the most recent federal decennial statewide census.

(k) Once every 3 years, review a sample of each state agency's internal audit reports to determine compliance with current Standards for the Professional Practice of Internal Auditing or, if appropriate, government auditing standards.

(l) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall provide a copy of his or her determination to each member of the audited entity's governing body and to the Legislative Auditing Committee.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

Section 2. Subsection (13) of section 364.02, Florida Statutes, is amended to read:

364.02 Definitions.—As used in this chapter:

(13) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

(a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;

(b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;

(c) A commercial mobile radio service provider;

(d) A facsimile transmission service;

(e) A private computer data network company not offering service to the public for hire;

(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or

- (g) An intrastate interexchange telecommunications company.

However, each commercial mobile radio service provider and each intrastate interexchange telecommunications company shall continue to be liable for any taxes imposed under pursuant to chapters 202, 203 and 212 and any fees assessed under s. pursuant to ss. 364.025 and 364.336. Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, ~~364.336~~, 364.501, 364.603, and 364.604, shall provide the commission with the ~~such~~ current information as the commission deems necessary to contact and communicate with the company, shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service, and shall reduce its intrastate long distance toll rates in accordance with s. 364.163(2).

Section 3. Paragraph (a) of subsection (13) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency telephone number “911.”—

(13) “911” FEE.—

(a) Following approval by referendum as set forth in paragraph (b), or following approval by a majority vote of its board of county commissioners, a county may impose a “911” fee to be paid by the local exchange subscribers within its boundaries served by the “911” service. Proceeds from the “911” fee shall be used only for “911” expenditures as set forth in subparagraph 6. The manner of imposing and collecting said payment shall be as follows:

1. At the request of the county subscribing to “911” service, the telephone company shall, insofar as is practicable, bill the “911” fee to the local exchange subscribers served by the “911” service, on an individual access line basis, at a rate not to exceed 50 cents per month per line (up to a maximum of 25 access lines per account bill rendered). However, the fee may not be assessed on any pay telephone in this state. A county collecting the fee for the first time may collect the fee for no longer than 36 months without initiating the acquisition of its “911” equipment.

2. Fees collected by the telephone company pursuant to subparagraph 1. shall be returned to the county, less the costs of administration retained pursuant to paragraph (c). The county shall provide a minimum of 90 days’ written notice to the telephone company prior to the collection of any “911” fees.

3. Any county that currently has an operational “911” system or that is actively pursuing the implementation of a “911” system shall establish a fund to be used exclusively for receipt and expenditure of “911” fee revenues collected pursuant to this section. All fees placed in said fund, and any interest accrued thereupon, shall be used solely for “911” costs described in subparagraph 6. The money collected and interest earned in this fund shall

be appropriated for "911" purposes by the county commissioners and incorporated into the annual county budget. Such fund shall be included within the financial audit performed in accordance with s. 218.39. A report of the audit shall be forwarded to the office within 60 days of its completion. A county may carry forward on an annual basis unspent moneys in the fund for expenditures allowed by this section, or it may reduce its fee. However, in no event shall a county carry forward more than 10 percent of the "911" fee billed for the prior year. The amount of moneys carried forward each year may be accumulated in order to allow for capital improvements described in this subsection. The carryover shall be documented by resolution of the board of county commissioners expressing the purpose of the carryover or by an adopted capital improvement program identifying projected expansion or replacement expenditures for "911" equipment and service features, or both. In no event shall the "911" fee carryover surplus moneys be used for any purpose other than for the "911" equipment, service features, and installation charges authorized in subparagraph 6. Nothing in this section shall prohibit a county from using other sources of revenue for improvements, replacements, or expansions of its "911" system. A county may increase its fee for purposes authorized in this section. However, in no case shall the fee exceed 50 cents per month per line. All current "911" fees shall be reported to the office within 30 days of the start of each county's fiscal period. Any fee adjustment made by a county shall be reported to the office. A county shall give the telephone company a 90-day written notice of such fee adjustment.

4. The telephone company shall have no obligation to take any legal action to enforce collection of the "911" fee. The telephone company shall provide quarterly to the county a list of the names, addresses, and telephone numbers of any and all subscribers who have identified to the telephone company their refusal to pay the "911" fee.

5. The county subscribing to "911" service shall remain liable to the telephone company for any "911" service, equipment, operation, or maintenance charge owed by the county to the telephone company.

As used in this paragraph, "telephone company" means an exchange telephone service provider of "911" service or equipment to any county within its certificated area.

6. It is the intent of the Legislature that the "911" fee authorized by this section to be imposed by counties will not necessarily provide the total funding required for establishing or providing the "911" service. For purposes of this section, "911" service includes the functions of database management, call taking, location verification, and call transfer. The following costs directly attributable to the establishment and/or provision of "911" service are eligible for expenditure of moneys derived from imposition of the "911" fee authorized by this section: the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and "911" service features, as defined in the Florida Public Service Commission's lawfully approved "911" and related tariffs and/or the acquisition, installation, and maintenance of other "911" equipment, including call answering equipment, call transfer equipment, ANI controllers, ALI controllers, ANI dis-

plays, ALI displays, station instruments, “911” telecommunications systems, teleprinters, logging recorders, instant playback recorders, telephone devices for the deaf (TDD) used in the “911” system, PSAP backup power systems, consoles, automatic call distributors, and interfaces (hardware and software) for computer-aided dispatch (CAD) systems; salary and associated expenses for “911” call takers for that portion of their time spent taking and transferring “911” calls; salary and associated expenses for a county to employ a full-time equivalent “911” coordinator position and a full-time equivalent staff assistant position per county for the portion of their time spent administrating the “911” system; training costs for PSAP call takers in the proper methods and techniques used in taking and transferring “911” calls; and expenses required to develop and maintain all information (ALI and ANI databases and other information source repositories) necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the “911” call-taking and transferring function; and, ~~in a county defined in s. 125.011(1), such expenses related to a nonemergency “311” system, or similar nonemergency system, which improves the overall efficiency of an existing “911” system or reduces “911” emergency response time for a 2-year pilot project that ends June 30, 2003. However, No wireless telephone service provider shall be required to participate in any this pilot project or to otherwise implement a nonemergency “311” system or similar nonemergency system. The “911” fee revenues shall not be used to pay for any item not listed, including, but not limited to, any capital or operational costs for emergency responses which occur after the call transfer to the responding public safety entity and the costs for constructing buildings, leasing buildings, maintaining buildings, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and “911” equipment rooms.~~

7. It is the goal of the Legislature that enhanced “911” service be available throughout the state. Expenditure by counties of the “911” fees authorized by this section should support this goal to the greatest extent feasible within the context of local service needs and fiscal capability. Nothing in this section shall be construed to prohibit two or more counties from establishing a combined emergency “911” telephone service by interlocal agreement and utilizing the “911” fees authorized by this section for such combined “911” service.

Section 4. Subsections (3), (6), and (11) and paragraphs (a) and (c) of subsection (8) of section 365.172, Florida Statutes, are amended to read:

365.172 Wireless emergency telephone number “E911.”—

(3) DEFINITIONS.—Only as used in this section and ss. 365.173 and 365.174, the term:

(a) “Active prepaid wireless telephone” means a prepaid wireless telephone that has been used by the customer during the month to complete a telephone call for which the customer’s card or balance was decremented.

(b) “Answering point” means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the ~~such~~ calls.

(c) “Automatic location identification” means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone used to place a 911 call.

(d) “Automatic number identification” means the capability of the E911 service which enables the automatic display of the 10-digit service number used to place a 911 call.

(e) “Board” means the board of directors of the Wireless 911 Board.

(f) “Building-permit review” means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations. “Office” means the State Technology Office.

(g) “Collocation” means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

(h) “Designed service” means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.

(i)(g) “E911” is the designation for a wireless enhanced 911 system or wireless enhanced 911 service that is an emergency telephone system or service that provides a subscriber with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features in accordance with the requirements of the order.

(j) “Existing structure” means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(k)(h) “Fee” means the E911 fee imposed under subsection (8).

(l)(i) “Fund” means the Wireless Emergency Telephone System Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing 911 service or E911 service, including the costs of implementing the order.

(m) “Historic building, structure, site, object, or district” means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(n) “Land development regulations” means any ordinance enacted by a local government for the regulation of any aspect of development, including

an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.

~~(o)~~~~(j)~~ “Local exchange carrier” means a “competitive local exchange telecommunications company” or a “local exchange telecommunications company” as defined in s. 364.02.

~~(p)~~~~(k)~~ “Local government” means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) “Medium county” means any county that has a population of 75,000 or more but less than 750,000.

~~(r)~~~~(l)~~ “Mobile telephone number” or “MTN” means the telephone number assigned to a wireless telephone at the time of initial activation.

(s) “Office” means the State Technology Office.

~~(t)~~~~(m)~~ “Order” means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of wireless 911 services.

~~(u)~~~~(o)~~ “Prepaid wireless telephone service” means wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless additional payments are made.

~~(v)~~~~(n)~~ “Provider” or “wireless provider” means a person or entity who provides service and either:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service or E911 service in this state.

~~(w)(p)~~ “Public agency” means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

~~(x)(q)~~ “Public safety agency” means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

~~(y)(r)~~ “Rural county” means any county that has a population of fewer than 75,000.

~~(z)(s)~~ “Service” means “commercial mobile radio service” as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C., ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term “service” includes the term “wireless” and service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

~~(aa)(t)~~ “Service number” means the unique 10-digit wireless telephone number assigned to a service subscriber.

~~(bb)(u)~~ “Sufficient positive balance” means a dollar amount greater than or equal to the monthly wireless surcharge amount.

~~(cc)~~ “Tower” means any structure designed primarily to support a wireless provider’s antennae.

~~(dd)~~ “Wireless communications facility” means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

~~(ee)(v)~~ “Wireless 911 system” or “wireless 911 service” means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by dialing the digits “911.” A wireless 911 system is complementary to a wired 911 system as provided for in s. 365.171.

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the E911 fee.
2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173. The board may establish a schedule for implementing wireless E911 service by service area, and prioritize disbursements of revenues from the fund to providers and rural counties as provided in s. 365.173(2)(b) and (c) pursuant to the schedule, in order to implement E911 services in the most efficient and cost-effective manner. Revenues collected and deposited into the fund for distribution as provided in s. 365.173(2)(b), but which have not been disbursed because sworn invoices as required by 365.173(2)(b) have not been submitted to the board, may be utilized by the board as needed to provide grants to rural counties and loans to medium counties for the purpose of upgrading E911 systems. Grants provided to rural counties would be in addition to disbursements provided under s. 365.173(2)(c). Loans provided to medium counties shall be based on county hardship criteria as determined and approved by the board. Revenues utilized for this purpose shall be fully repaid to the fund in a manner and under a timeframe as determined and approved by the board. The board shall take all actions within its authority to ensure that county recipients of such grants and loans utilize these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant and loan revenues upon determination that the funds were not utilized for the purpose under which they were provided.

4. Review documentation submitted by providers which reflects current and projected funds derived from the E911 fee, and the expenses incurred and expected to be incurred, in order to comply with the E911 service requirements contained in the order for the purposes of:

a. Ensuring that providers receive fair and equitable distributions of funds from the fund.

b. Ensuring that providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.

c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the E911 fee.

d. Implementing changes to the allocation percentages or reducing the E911 fee under paragraph (8)(c).

5. Review and approve or reject, in whole or in part, applications submitted by providers for recovery of moneys deposited into the fund.

6. Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.

7. Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

8. Take all necessary and reasonable steps by July 1, 2000, to secure appropriate information and reports from providers and otherwise perform all of the functions that would be performed by an independent accounting firm prior to completing the request-for-proposals process under subsection (7).

9. Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

10. Adopt, use, and alter a common corporate seal.

11. Elect or appoint the officers and agents that are required by the affairs of the board.

12. The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

13. Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state.

14. Provide coordination and support for educational opportunities related to 911 issues for the 911 community in this state.

15. Act as an advocate for issues related to 911 system functions, features, and operations to improve the delivery of 911 services to the residents of and visitors to this state.

16. Coordinate input from this state at national forums and associations, to ensure that policies related to 911 systems and services are consistent with the policies of the 911 community in this state.

17. Work cooperatively with the system director established in s. 365.171(5) to enhance the state of 911 services in this state and to provide unified leadership for all 911 issues through planning and coordination.

18. Do all acts and things necessary or convenient to carry out the powers granted in this section, including but not limited to, consideration of emerging technology and related cost savings.

19. Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which reflects, for the immedi-

ately preceding calendar year, the quarterly and annual receipts and disbursements of moneys in the fund, the purposes for which disbursements of moneys from the fund have been made, and the availability and status of implementation of E911 service in this state.

(d) By February 28, 2001, the board shall undertake and complete a study for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses:

1. The total amount of E911 fee revenues collected by each provider, the total amount of expenses incurred by each provider to comply with the order, and the amount of moneys on deposit in the fund, all as of December 1, 2000.

2. Whether the amount of the E911 fee and the allocation percentages set forth in s. 365.173 should be adjusted to comply with the requirements of the order, and, if so, a recommended adjustment to the E911 fee.

3. Any other issues related to providing wireless E911 services.

(8) WIRELESS E911 FEE.—

(a) Each home service provider shall collect a monthly fee imposed on each customer whose place of primary use is within this state. For purposes of this section, the state and local governments are not customers. The rate of the fee shall be 50 cents per month per each service number, beginning August 1, 1999. The fee shall apply uniformly and be imposed throughout the state.

(c) After July 1, 2001, the board may adjust the allocation percentages provided in s. 365.173 or reduce the amount of the fee, or both, if necessary to ensure full cost recovery or prevent overrecovery of costs incurred in the provision of E911 service, including costs incurred or projected to be incurred to comply with the order. Any new allocation percentages or reduced fee may not be adjusted for 1 year ~~2 years~~. The fee may not exceed 50 cents per month per each service number.

(11) FACILITATING E911 SERVICE IMPLEMENTATION.—To balance the public need for reliable E911 services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection shall not, however, be construed to waive or alter the provisions of ss. 286.011 or 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless

communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.:

~~(a) Collocation Colocation among wireless telephone service providers is encouraged by the state. To further facilitate agreements among providers for collocation of their facilities, any antennae and related equipment to service the antennae that is being colocated on an existing above-ground structure is not subject to land development regulation pursuant to s. 163.3202, provided the height of the existing structure is not increased. However, construction of the antennae and related equipment is subject to local building regulations and any existing permits or agreements for such property, buildings, or structures.~~

1.a. Collocations on towers, including nonconforming towers, that meet the requirements in sub-sub-subparagraphs (I), (II), and (III), are subject to only building-permit review, which may include a review for compliance with this subparagraph. Such collocations are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

(III) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., collocations on all other existing structures that meet the requirements in sub-sub-subparagraphs (I)-(IV) shall be subject to no more than building-permit review, and an administrative review for compliance with this subparagraph. Such collocations are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

(II) The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(III) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the collocation application; and

(IV) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to collocations addressed in this subparagraph.

d. If only a portion of the collocation does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subparagraph, that portion of the collocation only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the collocation shall be reviewed in accordance with this subparagraph. A collocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government's regulations, including, but not limited to, land development regulations review, and building-permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

2. If a collocation does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations,

applicable to the placement of an initial antennae and its accompanying equipment enclosure and ancillary facilities.

3. If a collocation meets the requirements of subparagraph 1., the collocation shall not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.

4. ~~The Nothing herein shall relieve the permitholder for or owner of the existing tower on which the proposed antennae are to be collocated shall remain responsible for structure of compliance with any applicable condition or requirement of a permit, or agreement, or any applicable condition or requirement of the land development regulations regulation to which the existing tower had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph or law.~~

5. An existing tower, including a nonconforming tower, may be structurally modified in order to permit collocation or may be replaced through no more than administrative review and building-permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph shall not preclude a public hearing for any appeal of the decision on the application.

(b)1. A local government's land development and construction regulations for wireless communications facilities and the local government's review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues. In such local government regulations or review, the local government may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government. In such local government regulations or review, a local government may not require information on or evaluate the wireless provider's designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information. Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the provider's designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land development or zoning issue addressed in its adopted regulations that do not conflict with this section, including, but not limited to, aesthetics, landscaping, land use based location priorities, structural design, and setbacks.

2. Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

3. A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination shall not be considered an application under paragraph (11)(d).

4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building-permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements, except as otherwise limited in this section, but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.

~~(c)(b)~~ Local governments may ~~shall~~ not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, ~~except. However, local governments shall receive evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but from a provider and~~ may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

~~(d)(e)1.~~ A local government shall grant or deny each a properly completed application for a collocation permit, including permits under subparagraph (11)(a)1. ~~paragraph (a), for the collocation of a wireless communications~~

~~facility on property, buildings, or structures within the local government's jurisdiction based on the application's compliance with the local government's applicable regulations, as provided for in subparagraph (11)(a)1, and consistent with this subsection, and within the normal timeframe for a similar building-permit review but in no case later than 45 business days after the date the properly completed application is determined to be properly completed in accordance with this paragraph initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.~~

2. ~~A local government shall grant or deny each a properly completed application for any other wireless communications facility based on the application's compliance with the local government's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than a permit for the siting of a new wireless tower or antenna on property, buildings, or structures within the local government's jurisdiction within 90 business days after the date the properly completed application is determined to be properly completed in accordance with this paragraph initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.~~

3.a. ~~An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not shall notify the permit applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, as to whether the application is deemed, for administrative purposes only, to be properly completed and has been properly submitted. However, the such determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the Such notification must shall indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, shall make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the re-~~

quired information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility permit which has been ~~properly submitted~~ within the timeframes set forth in this paragraph, the application permit shall be deemed automatically approved and the applicant provider may proceed with placement of the such facilities without interference or penalty. The timeframes specified in subparagraph ~~subparagraphs 1. and 2.~~ may shall be extended only to the extent that the application permit has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications ~~permits,~~ require action by the governing body and such action has not taken place within the timeframes specified in subparagraph ~~subparagraphs 1. and 2.~~ Under such circumstances, the local government must act to either grant or deny the application permit at its next regularly scheduled meeting or, otherwise, the application is permit shall be deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph ~~herein~~ must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant ~~an entity seeking a permit,~~ except that, with respect to a specific application permit, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

~~(d) Any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site shall be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, shall apply.~~

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building-permit review.

~~(f)~~(e) Any other ~~provision~~ of law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On

other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action or failure to act or regulation or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

~~(f) Any wireless telephone service provider may report to the board no later than September 1, 2003, the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with federal Phase II E911 requirements using its own network. The provider shall also provide this information to the specifically identified county or municipality no later than September 1, 2003. Unless the board receives no report that unreasonable delays have occurred, the board shall, no later than September 30, 2003, establish a subcommittee responsible for developing a balanced approach between the ability of providers to locate wireless facilities necessary to comply with federal Phase II E911 requirements using the carrier's own network and the desire of counties and municipalities to zone and regulate land uses to achieve public welfare goals. If a subcommittee is established, it shall include representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities. The subcommittee shall be charged with developing recommendations for the board and any specifically identified municipality or county to consider regarding actions to be taken for compliance for federal Phase II E911 requirements. In the annual report due to the Governor and the Legislature by February 28, 2004, the board shall include any recommendations developed by the subcommittee to address compliance with federal Phase II E911 requirements.~~

Section 5. Subsections (2) and (3) of section 365.173, Florida Statutes, are amended to read:

365.173 Wireless Emergency Telephone System Fund.—

(2) Subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or s. 365.172(8)(c), the moneys in the fund shall be distributed and used only as follows:

(a) Forty-four percent of the moneys shall be distributed each month to counties, based on the total number of wireless subscriber billing addresses in each county, for payment of:

1. Recurring costs of providing 911 or E911 service, as provided by s. 365.171(13)(a)6.

2. Costs to comply with the requirements for E911 service contained in the order and any future rules related to the order.

Any county that receives funds under this paragraph shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under this paragraph. All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs 1. and 2. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. A county may carry forward, for up to 3 successive calendar years, up to 30 percent of the total funds disbursed to the county by the board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement, if such expenditures are made for the purposes specified in this paragraph.

(b) Fifty-four percent of the moneys shall be distributed in response to sworn invoices submitted to the board by providers to reimburse such providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses incurred by providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Up to 2 percent of the funds allocated to providers shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be distributed to providers pursuant to this paragraph. ~~Beginning in state fiscal year 2000-2001,~~ Each provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to providers must be fair and nondiscriminatory. If the total amount of moneys requested by providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.

(c) Two percent of the moneys shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and

service enhancements and assistance for the 911 or E911 systems operated by rural counties and for the provision of reimbursable loans and grants by the office to rural counties for upgrading 911 systems.

The Legislature recognizes that the wireless E911 fee authorized under s. 365.172 will not necessarily provide the total funding required for establishing or providing the 911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.171(13)(a)6.

(3) Through fiscal year 2008-2009, the Auditor General shall annually audit the fund to ensure that moneys in the fund are being managed in accordance with this section and s. 365.172. The Auditor General shall provide a report of the annual audit to the board.

Section 6. Paragraph (a) of subsection (3) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(3)(a)1. Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services, except as otherwise provided in subparagraph 2., to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission or the Federal Communications Commission; and proof of insurance or self-insuring status adequate to defend and cover claims. ~~Nothing in this subparagraph is intended to limit or expand any existing zoning or land use authority of a municipality or county; however, no such zoning or land use authority may require an individual license, franchise, or other agreement as prohibited by this subparagraph.~~

2. Notwithstanding the provisions of subparagraph 1., a municipality or county may, as provided by 47 U.S.C. s. 541, award one or more franchises within its jurisdiction for the provision of cable service, and a provider of cable service shall not provide cable service without such franchise. Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal law and s. 166.046, except those terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees and permit fees as provided in paragraph (c) on providers of cable services. A municipality or county may exercise its right to require from providers of cable service in-kind requirements, including, but not limited to, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities to the extent permitted by federal law. A provider of cable service may exercise its right to recover any such expenses associated with such in-kind requirements, to the extent permitted by federal law.

Section 7. This act shall take effect July 1, 2005.

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.